

7

The opinion in support of the decision being entered today was *not* written
for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte E. PAUL GREEN

Appeal No. 2006-3354
Application No. 09/759,423
Technology Center 3700

HEARD: DECEMBER 14, 2006

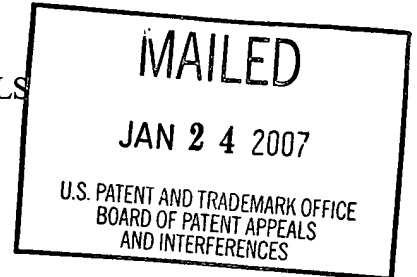
Before CRAWFORD, LEVY, GROSS, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1 to 12, 21, 22 and 38 to 41. Claims 13 to 20 have been canceled and claims 23 to 37 have been withdrawn from consideration.

The appellant's invention relates to a method and apparatus for a trailer jack mount. An understanding of the invention can be derived from a reading of the claims which are appended to the brief.



PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Sweetland, Jr.	3,345,037	Oct. 3, 1967
Linton et al. (Linton)	4,176,824	Dec. 4, 1979
Ebey	4,623,125	Nov. 18, 1986

REJECTIONS

Claims 39 to 41 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Claims 1, 2, 21, 22 and 38 to 40 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sweetland in view of Linton.

Claims 3 to 12 and 41 stand rejected under 35 U.S.C. §103 as being unpatentable over Sweetland in view of Linton as above applied taken with Ebey.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the examiner's answer (mailed September 26, 2005) for the reasoning in support of the rejection, and to appellant's brief (filed August 12, 2005) and reply brief (filed November 28, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations that follow.

We turn first to the examiner's rejection of claims 39 to 41 under 35 U.S.C. §112, first paragraph. In the examiner's view, appellant's disclosure does not include a written description of an A-frame coupler designed to be coupled to a hitch ball. We initially note that the test for determining compliance with the written description requirement is whether the disclosure of the

application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. *See Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1116-17 (Fed. Cir. 1991) and *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983).

The examiner is of the opinion that appellant's specification does not describe an A-frame coupler designed to be coupled to a hitch ball.

The appellant argues that this subject matter is depicted in Figure 1A of the disclosure.

The appellant is correct that the content of the drawings may be considered in determining compliance with the written description requirement. *Id.* In addition, as the specification states that trailers are attached to towing vehicles by hitch mechanisms (page 1), and Figure 1A depicts a circular element with a pin therein at the apex of the A-frame, it is our view that such would have been conveyed to a person of ordinary skill in the art at the time of the invention that the appellant had possession of an A-frame designed to be coupled to a hitch ball. Therefore, we will not sustain the examiner's rejection under 35 U.S.C. § 112, first paragraph.

We turn next to the examiner's rejection of claims 1, 2, 21, 22, and 38 to 40 under 35 U.S.C. § 103 as being unpatentable over Sweetland in view of Linton. We initially note that the examiner bears the initial burden of presenting a *prima facie* case of obviousness. *See In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. *See In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993).

The examiner is of the opinion that Sweetland discloses an A-frame coupler of a trailer and a jack which is removable from the trailer for the sole purpose of stowing the jack in a remote location so that the jack will not be in the way when the trailer is driven along the ground. The examiner relies on Linton for teaching a vehicle jack selectively mountable on a vehicle such that the jack may be stowed in an up location of the vehicle so that the jack will not be in the way when the vehicle is driven along the ground. The examiner further finds that Linton discloses a

first piece 38 mounted to the vehicle and a second piece 32 mounted to the jack. The examiner concludes:

To employ anywhere on the Sweetland trailer A-frame coupler a first piece mounted to the trailer and a second piece mounted to the vehicle jack would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Linton et al. One of ordinary skill in the art would have been motivated to do this in order to enable the A-frame mounted jack of Sweetland to be stowed in a much more convenient "up" location on the trailer so that the jack will not be in the way when the trailer is driven along the ground [answer, page 4].

We do not agree with the examiner's position that a person of ordinary skill in the art would have been motivated to convert the removable jack of Sweetland to a non-removable jack as is described in Linton so that the jack can be stowed while the vehicle is being towed down the road. Firstly, Sweetland discloses, as an object or purpose of the invention, that the jack is easily installed and removed (col. 2, lines 5 to 7). Therefore, we agree with the appellant that a person of ordinary skill in the art would not be motivated to modify the Sweetland jack so that the jack is not removable because such modification would destroy one of the purposes of the invention. In regard to the examiner's argument that the only reason to remove the Sweetland jack is to stow the jack, we note that Sweetland does not describe a need to stow the jack. In addition, in our view, stowability would not be the only reason for removing the jack. A jack might be removed for use on another vehicle for example.

In addition, it is not clear to us how the examiner proposes to modify the A-frame jack of Sweetland to arrive at the present invention. For example, it is not clear where the examiner proposes that a Linton type jack be attached to the A-frame yoke of Sweetland.

For the foregoing reasons, we will not sustain the examiner's rejection.

In regard to the rejection of claims 3 to 12 and 41 we note that this rejection also depends on the combination of Sweetland and Linton. We have reviewed the Ebey reference and found that it does not cure the deficiencies noted above for the Sweetland/Linton combination. Therefore, we will not sustain this rejection.

The decision of the examiner is reversed.

REVERSED

MURRIEL E. CRAWFORD
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

ANITA PELLMAN GROSS
Administrative Patent Judge

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